

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 424 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PANKAJKUMAR MANILAL JAISWAL

Appearance:

Mr.K.P. Raval, A.P.P. for Petitioner

MR VIJAY H PATEL for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 08/10/97

ORAL JUDGEMENT

In response to the Rule, Shri V.H. Patel has appeared for the respondent and Shri P.R. Joshi has argued the matter on behalf of the respondent.

The respondent/accused was facing trial under the Prevention of Food Adulteration Act in Criminal Case No. 133/93 in the Court of learned J.M.F.C., Lakhtar. The

respondent has opted for getting the sample examined by the Central Food Laboratory. Report received from the Central Food Laboratory was to the effect that the sample received by it was not in a fit condition for analysis. This promoted the accused to make application Ex.27 for discharge. The learned Magistrate granted the application and discharged and hence the present revision application.

Section 13 (2C) of the Act casts duty on the Court dealing with the matters where aforesaid situation has arisen. The duty is to the effect that if the Central Food Laboratory is not able to give its report on account either of the sample being lost or damaged the court shall require the local health authority to forward a part of the sample, if any, retained by it to the Court and on receipt thereof the Court shall proceed in the manner provided in sub-section 13 (2B).

At the request of the respondent the trial court did in accordance with Section 13 (2B). However, when the Central Food Laboratory reported that the sample received by it is not in a fit condition, instead of acting under Section 13 (2C) read with proviso, the trial court entertained the application Ex.27 and allowed the same. Obviously this is failure on the part of the Magistrate to exercise the jurisdiction vested in him as per Section 13 (2C) proviso. Obviously, therefore, the order of the trial court below Ex.27 cannot be sustained. The said order is, therefore, set aside and the application is rejected.

The trial court is directed to forthwith act in accordance with Section 13 (2C) proviso of the Prevention of Food Adulteration Act 1954 and further as provided under Section 13 (2D) it shall not continue with the proceedings pending before it till report is received from the Central Good Laboratory. The matter accordingly stands remanded to the trial court and matter shall stand revived and shall be proceeded with in compliance of the aforesaid directions and thereafter shall be disposed of in accordance with law. Rule is made absolute accordingly.